

**OPINION
45-219**

January 17, 1945 (OPINION)

OFFICE

RE: Treasurer and Sheriff - Limited to Two Terms

I understand that you were elected treasurer of McIntosh County, November 7, 1944. I also understand that the present treasurer was elected county auditor. The county auditor will take office, according to the statute, about a month before you take over your office. What you want to know now is whether or not you can serve, if appointed by the county commissioners, the unexpired term of the present treasurer, should he resign as treasurer and qualify as county auditor at the commencement of this regular term as such. Without jeopardizing your right to run for a second term as treasurer at the expiration of your first term. In other words, you want to know whether serving out the unexpired term of the present treasurer, when he takes over as county auditor, will bar you from holding the office of county treasurer for full four years, assuming that you are re-elected for a second two-year term.

Section 173 of the Constitution of the State of North Dakota, insofar as the same is pertinent to your question, reads:

"The sheriff and treasurer of any county shall not hold their respective offices for more than four years in succession."

Section 11-1401 of the 1943 Revised Code reads:

"The county treasurer shall not hold his office for more than four years in succession."

You will thus note that the Constitutional provision and the statute dealing with this matter, as to the number of years that you can serve, are identical in their wording. Section 11-1401 of the 1943 Revised Code is a revision of section 3259 of the 1913 Compiled Laws of North Dakota, which reads:

"The sheriff and the county treasurer shall not be eligible for election to such offices for more than two successive terms of two years each."

I assume that the provision, as contained in the 1943 Revised Code, was made for the purpose of harmonizing the language of the statute with the language contained in the State Constitution. It is clear, from the 1913 compiled laws, section 3259, that the county treasurer and the sheriff were entitled to two elective terms of two years each, one succeeding the other. In other words, each such official was entitled to serve two full terms of two years each.

If the section contained in the Revised Code is to be interpreted on the basis of the old statute, which clearly indicated the right of a county treasurer to two elective terms of two years each, one following the other, then it seems to me, that serving one month of a

term to which the treasurer was not elected should not disqualify him from serving two full elective terms, if elected for these terms, one after the other.

It would seem that the weight of authority is that serving a portion of a term, to which he was not elected, simply to finish up the time of another official in that office, would not disqualify you from seeking two full terms as county treasurer and serving both of them, if elected.

The court have generally held that only full terms served by the candidate in question are counted or considered. Therefore, you, as the duly elected treasurer, could be appointed to fill the unexpired term of the present treasurer, and thereafter, you would be eligible for two full terms of your own. See McGinnis v. Cossar, 18 S.W. 2d 988; Bozeman v. Laird, 45 So. 722; State v. Pontius, 85 N.E. 540; Black v. Pate, 30 So. 434.

It is, therefore, the opinion of this office, that you can seek and hold two full elective terms as county treasurer, after having served out the unexpired term of the present treasurer of your county, upon his taking office as county auditor.

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Attorney General